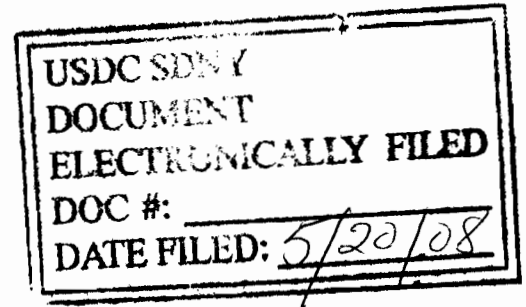


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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:
IN RE: METHYL TERTIARY BUTYL :
ETHER ("MTBE") PRODUCTS :
LIABILITY LITIGATION :
----- :

ORDER

This document relates to:

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

----- X
:
Tonneson, et al. v. Sunoco, Inc., et al., 03 :
Civ. 8284 :
Basso, et al. v. Sunoco, Inc., et al., 03 Civ. :
9050 :
----- X

SHIRA A. SCHEINDLIN, U.S.D.J.:

Plaintiffs are residents and business owners who live near two gasoline stations in the hamlet of Fort Montgomery, New York. After discovering that the groundwater wells that they own or use had been contaminated with a gasoline additive, methyl tertiary butyl ether ("MTBE"), plaintiffs brought these actions against the owners and suppliers of the gas stations.¹ At trial, plaintiffs propose to offer the expert testimony of Dr. William S. Cain to testify that "(1) MTBE can be detected by taste and odor at levels in drinking water of less than 1

¹ See generally *In re MTBE Prods. Liab. Litig.*, 528 F. Supp. 2d 303, 306-08 (S.D.N.Y. 2007) (discussing the background of this action).

part per billion (ppb), and (2) [people] exposed to water from plaintiffs' wells have detected contamination from MTBE.”²

Defendants have filed a motion to exclude Dr. Cain's testimony on the ground that it does not satisfy the requirements of Rule 702 of the Federal Rules of Evidence.³ Dr. Cain's proposed testimony is identical to the testimony offered in a related case in this multi-district litigation.⁴ In granting the motion to exclude that testimony, I explained:

Dr. Cain's testimony [about the taste and odor threshold for MTBE] is not based on a method that has *scientific* validity. Indeed, the Court would be surprised if Dr. Cain were to submit such a report to his colleagues for discussion or review, or if he were to use it as a model for his students to follow when explaining research and studies in his field. As a result, Dr. Cain's proffered opinion that MTBE can be detected by smell or taste in drinking water at levels at or below 1 ppb must be excluded.⁵

² Plaintiffs' Response to Defendants' Joint Motion *In Limine* to Exclude the Testimony of William S. Cain, Ph.D. at 2 (citing Expert Report of William S. Cain, Ph.D. at 3).

³ See Defendants' Memorandum of Law in Support of Defendants' Joint Motion *In Limine* to Exclude the Testimony of William S. Cain, Ph.D. at 1-9; Defendants' Reply in Support of Defendants' Joint Motion *In Limine* to Exclude the Testimony of William S. Cain, Ph.D. at 1-8.

⁴ There are some stylistic differences between the two expert reports submitted by Dr. Cain, but the substance of each opinion is the same.

⁵ *In re MTBE*, 2008 WL 1971547, at *12 (S.D.N.Y. May 7, 2008) (emphasis in original).

In addition, because Dr. Cain's proposed testimony that people exposed to water from plaintiffs' wells have detected contamination from MTBE "merely appl[ies] Dr. Cain's inadmissible opinion to specific wells,"⁶ it must also be excluded.

Defendants' motion is therefore granted. The Clerk of the Court is directed to close this motion (docket #1755).

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
May 19, 2008

⁶ *Id.* at *1 n.5

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